

R156. Commerce, Occupational and Professional Licensing.

R156-46b. Division Utah Administrative Procedures Act Rule.

R156-46b-101. Title.

This rule is known as the "Division Utah Administrative Procedures Act Rule."

R156-46b-103. Authority - Purpose.

This rule is adopted by the division under the authority of Title 63G, Chapter 4, Subsection 58-1-108(1), and Subsection 58-1-106(1)(a). The purposes of this rule include:

- (a) classifying division adjudicative proceedings;
- (b) clarifying the identity of presiding officers at division adjudicative proceedings; and
- (c) defining procedures for division adjudicative proceedings which are consistent with the requirements of Titles 58 and 63G and Rule R151-46b.

R156-46b-201. Formal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

- (a) denial of application for renewal of licensure;
- (b) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(5);
- (c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(b);
- (d) special appeals board held in accordance with Section 58-1-402;
- (e) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, in which the claimant is precluded from obtaining the required civil judgment or administrative order against the nonpaying party involved in the claim because the nonpaying party filed bankruptcy;
- (f) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (e);
- (g) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and
- (h) board of appeal held in accordance with Subsection 58-56-8(3).

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

- (a) disciplinary proceedings which result in the following sanctions:
 - (i) revocation of licensure, except a proceeding requesting revocation of licensure for failure to maintain a qualifier under Subsections 58-55-304(6) and (7) or a proceeding requesting revocation of licensure for failure to maintain liability insurance under Subsection 58-55-302(2)(b);
 - (ii) suspension of licensure;
 - (iii) restricted licensure;
 - (iv) probationary licensure;
 - (v) issuance of a cease and desist order except when imposed by citation or by an order in a contested citation hearing;
 - (vi) administrative fine except when imposed by citation or by an order in a contested citation hearing; and
 - (vii) issuance of a public reprimand; and
- (b) unilateral modification of a disciplinary order.

R156-46b-202. Informal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as informal adjudicative proceedings:

- (a) approval of application for initial licensure, renewal or reinstatement of

licensure, or relicensure;

(b) denial of application for initial licensure or relicensure;

(c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(a);

(d) denial of application for reinstatement of restricted, suspended, or probationary licensure during the term of the restriction, suspension, or probation;

(e) approval or denial of application for inactive or emeritus licensure status;

(f) board of appeal under Subsection 58-56-8(3);

(g) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, except those in which the claimant is precluded from obtaining the required civil judgment or administrative order against the nonpaying party involved in the claim because the nonpaying party filed bankruptcy;

(h) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (g);

(i) approval or denial of request to surrender licensure;

(j) approval or denial of request for entry into diversion program under Section 58-1-404;

(k) matters relating to diversion program;

(l) contested citation hearing held in accordance with Subsection 58-55-503(4)(b);

(m) approval or denial of request for modification of disciplinary order;

(n) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;

(o) approval or denial of request for correction of procedural or clerical mistakes;

(p) approval or denial of request for correction of other than procedural or clerical mistakes; and

(q) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action or request for agency action are classified as informal adjudicative proceedings:

(a) disciplinary proceeding seeking exclusively the issuance of a private reprimand;

(b) nondisciplinary proceeding which results in cancellation of licensure;

(c) disciplinary sanctions imposed in a memorandum of understanding with an applicant for licensure;

(d) termination of diversion agreements;

(e) a proceeding requesting revocation of licensure for failure to maintain a qualifier under Subsections 58-55-304(6) and (7); and

(f) a proceeding requesting revocation of licensure for failure to maintain liability insurance under Subsection 58-55-302(2)(b).

R156-46b-301. Designation.

The presiding officers for division adjudicative proceedings are as defined at Subsection 63G-4-103(1)(h) and as specifically established by Section 58-1-109 and by Section R156-1-109.

R156-46b-401. In General.

(1) The procedures for formal division adjudicative proceedings are set forth in Sections 63G-4-204 through 63G-4-208, Rule R151-46b-1, and this rule.

(2) The procedures for informal division adjudicative proceedings are set forth in Section 63G-4-203, Rule R151-46b-1, and this rule.

R156-46b-403. Evidentiary Hearings in Informal Adjudicative Proceedings.

(1) Evidentiary hearings are not required for informal division adjudicative proceedings unless required by statute or rule, or permitted by rule and requested by a party within the time prescribed by rule.

(2) Unless otherwise provided, a request for an evidentiary hearing permitted by rule must be submitted in writing no later than 20 days following the issuance of the notice of agency action if the proceeding was initiated by the division, or together with the request for agency action if the proceeding was not initiated by the division.

(3) Evidentiary hearings are required for the following informal proceedings:

(a) R156-46b-202(1)(l), contested citation hearing held in accordance with Subsection 58-55-503(4)(b); and

(b) R156-46b-202(1)(f), board of appeal held in accordance with Subsection 58-56-8(3).

(4) Evidentiary hearings are permitted for the following informal proceedings:

(a) R156-46b-202(1)(k), matters relating to a diversion program; and

(b) R156-46b-202(2)(a), issuance of a private reprimand.

(5) Unless otherwise agreed by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63G-4-203(1)(d). Timely notice means service of a Notice of Hearing upon all parties not later than ten days prior to any scheduled evidentiary hearing.

(6) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in a division informal adjudicative proceeding.

R156-46b-404. Orders in Informal Adjudicative Proceedings.

(1) Orders issued in division informal adjudicative proceedings shall comply with Subsection 63G-4-203(1)(i).

(2) Issuance of a license or approval of related requests in response to a request for agency action is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i).

(3) Issuance of a letter denying a license or related requests is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i). The letter must explain the reasons for the denial and the rights of the parties to seek agency review, including the time limits for requesting review.

(4) Unless otherwise specified by the director, the fact finder who serves as the presiding officer at an evidentiary hearing convened in division informal adjudicative proceedings shall issue a final order.

(5) Orders issued in division informal adjudicative proceedings in which an evidentiary hearing is convened shall comply with the requirements of Subsection 63G-4-208(1).

R156-46b-405. Informal Agency Advice.

(1) The division may issue an informal guidance letter in response to a request for advice unless the request specifically seeks a declaratory order.

(2) A notice shall be appear in the informal guidance letter notifying the subject of the letter that the letter is an informal guidance letter only and is not intended as a formal declaratory order. The notice shall also provide the citation where the requirements which govern declaratory orders are found.

KEY: administrative procedure, government hearings, occupational licensing

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DIVISION UTAH ADMINISTRATIVE
PROCEDURES ACT RULE

R156-46b
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